

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Contact Person: [REDACTED]

Date _____

Telephone Number: [REDACTED]

Signature _____

In Reference to: [REDACTED]

Date: [REDACTED]

Employer Identification Number: [REDACTED]
Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were created under the laws of [REDACTED] on [REDACTED]. Your articles of incorporation state that you are "organized exclusively for charitable and educational purposes as qualifies under section 501(c)(3) of the Internal revenue Code, or the corresponding section of any future federal tax code."

To carry out your purposes, you will provide yearly scholarships to selected graduating members of the organization. Your members must currently be enrolled in a high school college preparatory program, and, must maintain a certain grade point average throughout the program. You state that you will provide employment experiences for college bound students while providing funds to help finance their college education. You will supply the opportunity for your members to gain work experience in a wide spectrum of industries and settings, providing them with life-long learning experiences that will prove invaluable as they enter and exit college to join the working world as young adults.

Graduation requirements from your program are based upon: (1) confirmation of high school graduation, and (2) Good standing in the Pezziwig Foundation relative to membership requirements.

Potential members (or their guardians if under the age of 18) are required to execute the following agreement:

-2-

Membership Contract

As a member of the [REDACTED] I agree to abide by all rules & regulations governing the organization. I understand the membership and graduation requirements outlined in the agreement as well as the opportunity to earn education funds and scholarships for further education.

Additional requirements for membership are as follows:

-Provide permission for the release of high school transcripts

-Agree to work for the selected employment agency ([REDACTED])

Work towards the goals of the [REDACTED] as outlined in the [REDACTED] mission.

Corporate sponsors execute the following agreement:

Corporate Sponsorship Agreement

The Sponsorship Agreement is made and entered into this ---- day of ---- (year) by and between [REDACTED], a not-for-profit corporation established under the laws of the State of [REDACTED] (the "Foundation") and -----, ("Sponsor").

Whereas, the Foundation has been established to provide educational opportunities and financial aid to college bound secondary students, and

Whereas, the Sponsor has agreed to provide certain work experience opportunities for Foundation members.

Now, therefore, in consideration of the mutual covenants and obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the parties hereby agree as follows:

1. The Foundation will provide eligible youth for employment opportunities.

[REDACTED]

2. The Sponsor will provide work opportunities for Foundation members.

3. The Sponsor will contribute to the Foundation in the amount \$ [REDACTED] /hr of the employment of the Foundation member, payable directly to the Foundation.

4. The Sponsor agrees to work with the selected employment agency of the Foundation.

You entered into the following Agreement with [REDACTED]:

This Service Agreement ("Agreement") is made and entered into this [REDACTED] day of [REDACTED] by and between the [REDACTED], a not-for-profit corporation established under the laws of the State of [REDACTED] ("the Foundation"), and [REDACTED], a corporation organized under the laws of the State of [REDACTED] (" [REDACTED] ").

WITNESSETH

Whereas, the Foundation has been established to provide educational opportunities and financial aid to college bound secondary students; and

Whereas, [REDACTED] has agreed to provide certain administrative and support services to the Foundation under the terms of this Agreement.

Now therefore, in consideration of the mutual covenants and obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. [REDACTED] shall process all applications and contracts for prospective beneficiaries of the Foundation and, in particular shall:

a) register prospective beneficiaries who have been solicited by the Foundation;

b) ensure the completeness and accuracy of all applications and contracts; and

[REDACTED]

c) maintain all information regarding prospective beneficiaries and participants in [REDACTED]'s employee profile database.

2. [REDACTED] shall analyze all applications and cross-check such applications against the employer database and requirements profiles maintained by [REDACTED] to determine the best employment situations available to prospective beneficiaries of the Foundation at pay rates which exceed the Foundation's minimum requirements and place such persons in the best situations possible.

3. [REDACTED] shall provide pre-employment training sessions for all prospective beneficiaries of the Foundation to develop the following character traits: diligence, punctuality, honesty, industry, leadership and integrity.

4. [REDACTED] shall manage the employment relationship between the beneficiaries of the Foundation and their employers, and, in particular shall:

a) make periodic billings to the employers which identify the salary payable to the participants and the Foundation Sponsorship payable by the employer;

b) participate in semi-annual performance reviews for all participants;

c) report periodically to the Foundation concerning the individual performance and hours worked by all beneficiaries of the Foundation; and

d) provide the support required for the Foundation to monitor the development of its participants.

5. In consideration for the services to be performed on behalf of the Foundation, [REDACTED] shall receive a fee equal to [REDACTED] Percent (%) of the hourly rate paid each beneficiary of the Foundation.

6. The initial term of this Agreement shall be one year from the date hereof unless terminated by either party upon not less than thirty (30) days written notice to the other party. This Agreement shall automatically be renewed for consecutive additional terms of one year each.

-5-

[REDACTED]

IN WITNESS WHEREOF, ...

At the time of your initial application, you stated that [REDACTED] will be originated in [REDACTED] of [REDACTED], and will provide temporary employment opportunities in the [REDACTED] area." You also stated that "At this point, estimates are that [REDACTED] % of [REDACTED]'s [REDACTED] income will be generated through operations with [REDACTED]. The additional revenues will be generated through employment activities for those who do not anticipate attending college or do not qualify for [REDACTED] academically."

Students will be paid directly by the [REDACTED] which will charge employers a service fee at a rate of [REDACTED] percent ([REDACTED]%) for each hour worked by a student employee. [REDACTED] will be responsible for all applicable employee taxes and insurance. [REDACTED] percent ([REDACTED]%) of the service fee will be given to you to be distributed as college grants to qualified participants.

You will receive funds from [REDACTED] based on a student/member's participation hours. [REDACTED] hours results in \$[REDACTED], while [REDACTED] hours would result in \$[REDACTED] in education funds.

You state that your initial fundraising would be the solicitation of foundation grants from the [REDACTED] region, and from the solicitation of corporate sponsors that would be asked to support you by providing funds, work experience, or both for the future leaders of the region.

You state that W-2's will be issued to students each year.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations that are organized and operated exclusively for charitable or educational purposes.

Section 1.501(c)(3)-1(d)(3) of the Income Tax regulations provides that the term "educational", as used in section 501(c)(3), relates to-

(a) the instruction or training of the individual for the purpose of improving or developing his capabilities; or

(b) The instruction of the public on subjects useful to the individual and beneficial to the community.

[REDACTED]

Section 1.501(c)(3) of the regulations states that:

An organization may meet the requirements of section 501(c)(3), although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513 of the Code.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled by such private interests.

Section 513(a) of the Code defines "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational or other purpose or function constituting the basis for its exemption under section 501, with certain exceptions not here relevant. It further provides that the term "trade or business" has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or the performance of services.

Section 1.513-1(b) of the regulations provides that the term "trade or business" has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or performance of services. It is further provided that activities of producing or distributing goods or performing services from which a particular amount of gross income is derived do not lose identify as a trade or business merely because they are carried on within a larger complex of other endeavors which may, or may not be related to the exempt purpose of the organization.

Rev. Rul. 67-367, 1967-2 C.B. 188, held that a nonprofit organization whose sole activity was the operation of a "scholarship" plan for making payments to pre-selected,

[REDACTED]

specifically named individuals did not qualify for exemption under section 501(c)(3) of the Code.

In Miss Georgia Scholarship Fund, Inc. v. Commissioner, 72 T.C. 267 (1979), an organization whose only activity was awarding scholarships to contestants in a beauty pageant did not qualify for exemption under section 501(c)(3) of the Code. All contestants, as a condition of receiving a scholarship, were required to sign a contract that obligated them to abide by pageant rules if selected to participate in the Miss America Pageant. The court concluded that the scholarships did not qualify for exemption under IRC 117 and the organization did not qualify for exemption under IRC 501(c)(3) because they were awarded in consideration of contractual obligations.

Many organizations set up to benefit employees have failed to qualify for exemption as charities. If the organizations are funded and controlled by the employer they may be operated to serve a business interest rather than an exclusively charitable purpose. For example, a foundation devoted its funds to paying educational and medical expenses of young performers employed by the founder, who was in show business. Exemption was lost because these expenditures were a form of compensation to the employees and directly furthered the business interests of the founder. Horace Heidt Foundation v. United States, 170 F. Supp. 634 (Ct. Cl. 1959).

An organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes. Better Business Bureau v. United States, 326 U.S. 278 (1945); Stevens Bros. Foundation, Inc. v. Commissioner, 324 F.2d 633 (8th Cir. 1963), aff'g. 39 T.C. 93 (1962), Cert. denied, 376 U.S. 969 (1964).

It is well established in the law of charities that providing scholarships and student loans is a charitable endeavor if they are provided on the basis of need, as in Rev. Rul. 66-103, 1966-1 C.B. 134, or merit, as in Rev. Rul. 69-257, 1969-1 C.B. 151, and are not subordinate of private purposes. Also, in Rev. Rul. 56-403, 1956-2 C.B. 307, the awarding of scholarships solely to members of a single fraternity did not preclude exemption under IRC 501(c)(3).

[REDACTED]

Your scholarship program is conducted in such a way as to create substantial benefits for [REDACTED]. In this case, for a student to be considered for a scholarship, the student must first become contractually bound to [REDACTED], owned by your Trustee, [REDACTED]. A sponsoring employer must also become contractually bound to work only with [REDACTED] to participate in the program. [REDACTED] is authorized to charge the sponsoring employer [REDACTED]% of a student's hourly salary as a service fee. [REDACTED] will then provide [REDACTED]% of that amount to you (the Foundation) for scholarships. Pursuant to the Agreement (Item (5)) [REDACTED] shall receive from you a fee equal to [REDACTED]% of the hourly rate paid to each of your beneficiaries (students). It is anticipated that the majority of [REDACTED]'s revenues will be generated from these activities. Thus, it would appear that [REDACTED] is the primary beneficiary of your activities.

Furthermore, under your Agreements, where you purport to provide "scholarships" to pre-selected, specifically named individuals designated by contract, you are also serving private interests rather than public charitable and educational interests contemplated under section 501(c)(3) of the Code. In this respect, your activities are indistinguishable from those of the organizations discussed in Miss Georgia Scholarship Fund, Inc. v. Commissioner, Horace Heidt Foundation v. United States, and Rev. Rul. 67-367, all cited above.

While there is nothing in section 501(c)(3) of the Code to prohibit all dealings between a charitable organization and its founder or with those in controlling positions, when the interests of charity are sacrificed to the private interests of the founder or of those in control, exemption is precluded because the organization is being made to serve private interests.

Because we believe that your operations will result in, (1) substantial private benefit to [REDACTED], (2) inurement to your Trustee, [REDACTED], who also owns [REDACTED], (3) and because your primary activity of providing a work-force for [REDACTED] is an integral part of [REDACTED]'s for-profit activity and will be considered a trade or business unrelated to any exempt function, and, (4) because you have not otherwise established that you meet the requirements for exemption under section 501(c)(3), we have concluded that you are not operated exclusively for charitable, educational or religious purposes and we therefore cannot recognize you as an organization exempt under that section.

[REDACTED]

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

[REDACTED]

46114

-10-

[REDACTED]

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Date [REDACTED]
Signature [REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[REDACTED]

Chief, Exempt Organizations

[REDACTED]

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Code	[REDACTED]	[REDACTED]				
Surname	[REDACTED]	[REDACTED]				
Date	[REDACTED]	[REDACTED]				